



Exploring the Use of Restorative Justice in Criminal Cases of Fraud and Embezzlement: A Study in Surabaya Police Area, Indonesia

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Abstract

In recent years, restorative justice has gained attention as an alternative approach to resolving criminal cases of fraud and embezzlement. The aim of restorative justice is to restore justice by promoting dialogue and agreement between the perpetrator and the victim, with the hope of reducing the number of prisoners and reintegrating the perpetrator into society. This study focuses on exploring the use of restorative justice in criminal cases of fraud and embezzlement in the Surabaya Police Area, Indonesia. Using an observational research approach, data were collected through interviews with relevant stakeholders. The study reveals that the adoption of restorative justice in resolving criminal cases of fraud and embezzlement is hindered by the lack of legal foundation similar to the Criminal Code and Criminal Procedure Code. Furthermore, the findings indicate that the application of restorative justice alone may not be sufficient in reducing criminal behavior. Therefore, it is recommended that the sentencing policy be revised for the purpose of resolving such cases. This research provides valuable insights into the potential and limitations of restorative justice in the context of criminal cases of fraud and embezzlement.

Keywords: *Restorative Justice; Criminal Cases; Fraud, Embezzlement; Surabaya Police Area*

Introduction

The Indonesian National Police (Polri) plays a crucial role in upholding public safety and maintaining law and order (Musyafaah et al., 2021). As mandated by Article 30 Paragraph 4 of the 1945 Constitution, Polri is a positive legal force that upholds the law. The primary responsibility of the Polri is law enforcement, which is carried out through the process of investigation, as stated in Law No. 2 of 2002 concerning the Indonesian National Police (Batilmurik et al., 2019).

The investigators of the Polri are officials who are given the authority to carry out investigative activities, as defined by Article 1 paragraph (10) of Police Law No. 2 of 2002 (Sopiyan et al., 2023). The

investigative process is the first point of entry into the criminal justice system, and it determines whether a criminal case can proceed to the prosecution and criminal justice processes.

The role of investigators in the criminal justice system is vital as they are responsible for gathering evidence and information related to criminal acts (Limbong & Riswadi, 2022). They have the power to arrest suspects and question witnesses to gather information for the investigation. The information they gather is used to determine whether a criminal case is valid and whether it should be taken to court for prosecution.

The Polri investigators also play an important role in maintaining the integrity of the criminal justice system (Mustika & Suwandi, 2022). They are responsible for conducting thorough and unbiased investigations, ensuring that justice is served and that the rights of all parties involved in the case are respected.

Fraud and embezzlement crimes have become a significant challenge for the Indonesian National Police, with the number of reports of fraud cases dominated by online fraud (cybercrimes) rising (Skibell, 2003). The rise in these crimes not only affects the public but also has significant financial impacts on victims. These crimes are often committed by individuals who are motivated by economic needs and a consumptive lifestyle. In a state of law, the police play an essential role in bringing justice to the victims of these crimes (Makiwane, 2015).

In Surabaya, Indonesia, the Satreskrim Police Station has uncovered a fraud and embezzlement case involving the recruitment of State Civil Apparatus (ASN) at the Surabaya City Dispenda. The suspect, TI, worked as an ASN, and ADS was his accomplice. They were suspected of embezzling \$1 billion from seven alleged victims. After learning of reports from victims of fraud, TI fled Surabaya City and was later caught with his accomplice ADS. They were charged with articles 378 and 372 of the Criminal Code with a penalty of 4 years in prison (Utomo, 2022).

According to Article 30 Paragraph 4 of the 1945 Constitution, Polri is a positive legal force for the law itself. The Polri's primary responsibility is to enforce the law through the investigation process, as stated in Law No. 2 of 2002 concerning the Indonesian National Police. Investigators, who are National Police officials, are authorized to carry out investigative efforts, as defined by Article 1 paragraph (10) of Police Law No. 2 of 2002.

The investigation process is a vital entry point into the criminal justice system, as it determines whether or not a criminal case can proceed to prosecution and other criminal justice processes. In recent years, there has been an increase in fraud and embezzlement crimes, highlighting the need to explore alternative approaches to criminal justice (Salehi et al., 2023; Sharma & Singh, 2022; Zhou, 2022). One such approach is restorative justice, which focuses on repairing the harm caused by the offense and restoring relationships between the parties involved (Van Ness et al., 2022).

Restorative justice is a progressive legal theory that emphasizes the idea that law exists for humans, and not the other way around (Hutabarat et al., 2022). The fundamental tenet of progressive law is that law exists to achieve human welfare and happiness, as emphasized by Prof. Satjipto Raharjo (Satjipto, 2009). Therefore, alternative approaches like restorative justice could be a more effective solution in addressing fraud and embezzlement crimes, and the police should consider implementing it.

By implementing restorative justice, the police can promote a more humanistic approach to justice. Restorative justice can benefit both offenders and law enforcement by ensuring that the needs of all parties involved are met, including the victims. The approach can help to prevent an accumulation of cases in court and an imbalance in prison capacity, which is a common problem in traditional criminal justice systems.

In essence, the Indonesian National Police should consider implementing restorative justice as an alternative approach to resolving criminal cases of fraud and embezzlement. Restorative justice can promote a more humanistic approach to justice and ensure that the needs of all parties involved are met. It is a promising solution that aligns with the progressive legal theory of achieving human welfare and happiness. As such, this study focuses on exploring the use of restorative justice in criminal cases of fraud and embezzlement in the Surabaya Police Area, Indonesia.

Research Methods

The researchers in this study utilized a qualitative research approach, specifically a case study (Winarno, 2012). This method allows for a detailed exploration of a specific case, collecting comprehensive information through various data collection procedures within a predetermined timeline. In this study, the case being explored is the use of restorative justice in resolving criminal cases of fraud and embezzlement within the Surabaya Police Area in Indonesia.

The case study method is particularly useful in answering the research questions of the study, which focus on the impact of restorative justice on the parties involved in such cases, including investigators, victims, and suspects. Additionally, the researchers sought to understand the considerations of investigators in using restorative justice in resolving these types of cases.

To gather data for the study, two sources were used. The first source is primary data, which was collected through interviews with the Surabaya Police Station. The purpose of these interviews was to gather information on the station's policies regarding the use of restorative justice in resolving cases of fraud and embezzlement. The second source is secondary data, which was obtained from books, journals, and scientific works related to the implementation of restorative justice in resolving criminal cases of fraud and embezzlement within the Surabaya Police Area.

Overall, the case study method, combined with the collection of both primary and secondary data, allowed the researchers to gain a comprehensive understanding of the use of restorative justice in resolving criminal cases of fraud and embezzlement within the Surabaya Police Area.

Findings and Discussion

1. Implementation of Restorative Justice as an Alternative for the Settlement of Fraud and Embezzlement at the Surabaya Police

The study delves into the concept of restorative justice as an alternative approach to settle fraud and embezzlement cases in Surabaya Police Area, Indonesia. It suggests that the traditional method of retributive justice, which focuses only on punishing the offender, fails to address the social repercussions of crimes. This approach may result in unresolved conflicts between the offender and the victim, even after the offender is punished. In contrast, restorative justice takes into account the interests of the victim and aims to ensure that both parties can coexist peacefully.

In implementing restorative justice as an alternative approach to addressing criminal offenses of fraud and embezzlement, both the perpetrator and victim must come to an agreement voluntarily, without any pressure or coercion from external parties. This agreement is referred to as litigation and is a crucial part of the process. The police, as responsible agents of the law, must ensure that any action taken is in accordance with their legal and professional obligations (Satjipto, 2009).

If the parties involved agree to pursue restorative justice during the investigation, the police may decide to terminate the investigation at their discretion, which is called SP3. This means that the case ends at the investigation and preparation stage. However, if either the complainant or respondent changes significant facts in such a way that the components of the article are reduced due to insufficient evidence, the inquiry may be discontinued due to lack of evidence.

The process of restorative justice should not compromise the legal rights of the parties involved or the integrity of the law (Wessels & Wijdekop, 2022). It should only be implemented with the consent of the parties and should be carried out with the utmost respect for the law. Restorative justice offers a way to repair the harm caused by criminal acts, promote healing, and rebuild relationships between the parties involved. It is an approach that should be considered as part of a broader strategy to address fraud and embezzlement crimes in society.

To implement restorative justice in resolving criminal cases, there are specific requirements that must be met, both materially and formally (Umam et al., 2022). The material requirement involves the willingness and voluntary relinquishment of the right to sue before the law by all parties involved. This agreement is usually marked by a statement of peace, where the victim and offender agree to make peace without any coercion or pressure from any party. This requirement ensures that both parties are willing to participate in the process and work towards repairing the harm caused by the offense.

In addition to the material requirement, there are also formal requirements that must be met. These include the presence of a letter of application for reconciliation between the two parties, a letter of settlement of the dispute between the parties in the litigation, and minutes of additional examination of the litigating parties after the settlement of the case through restorative justice. These documents are essential to ensure that the agreement is formalized and documented, and all parties involved understand the terms of the settlement.

It is important to note that, under Indonesian positive law, criminal cases cannot be handled outside the court. However, law enforcement procedures in Indonesia frequently involve mediation, peacemaking institutions, and other means outside the court. In the case of restorative justice, the police have no authority to coerce or urge the complainant and the accused to reconcile. The agreement for restorative justice must happen outside the police's authority and affairs, and both parties must come to an agreement voluntarily.

In conclusion, the implementation of restorative justice can be a viable alternative approach to resolving fraud and embezzlement cases, as it prioritizes the interests of the victim and aims to restore peace between the offender and the victim. While there are certain material and formal requirements that must be met to apply restorative justice, it can be a useful tool in resolving conflicts outside the court system. However, it is crucial to ensure that such agreements happen outside the authority and affairs of the police and with the voluntary agreement of both parties involved.

2. Obstacles to the Implementation of Restorative Justice as an Alternative for the Settlement of Fraud and Embezzlement at the Surabaya Police

Restorative justice is a promising approach for resolving criminal cases of fraud and embezzlement, and its implementation has been explored in the Surabaya Police Area in Indonesia. Despite its potential benefits, however, there are still some obstacles that hinder its full adoption in this area.

One of the main obstacles is the role of the police in the criminal justice system. Although they are responsible for investigating criminal cases and bringing them to trial, they may encounter difficulties in their investigations and may not be able to bring a case to the prosecutor's office due to reasons such as

insufficient evidence or a case not being criminal in nature. Nevertheless, Indonesian National Police investigators are authorized to use the principle of restorative justice in their investigations, as stated in Article 7 paragraph (1) letter j of Law Number 8 of 1981 concerning the Criminal Procedure Code.

In the case of Polrestabes Surabaya, investigators did not encounter significant obstacles in implementing restorative justice, as both parties cooperated in producing justice for each other. However, this is not always the case, and many cases that go through the criminal justice system fail to reflect or produce justice, leaving the needs of the parties involved, particularly the victims, unmet. This can result in an accumulation of cases in court and an imbalance in the capacity of prisons.

Another obstacle to the implementation of restorative justice is the lack of equivalent standards to the Criminal Code and Criminal Procedure Code. This can pose a challenge for researchers applying restorative justice, as the decisions made using this approach may not be known by the public and may not be legal in the absence of clear standards. Therefore, it is essential to raise awareness of restorative justice and ensure that it is fully understood and effectively implemented in criminal cases of fraud and embezzlement. By doing so, the criminal justice system can better meet the needs of all parties involved and promote a more peaceful and just society (Leonard, 2022).

Conclusion

The conclusion of the study highlights the potential of restorative justice as a viable alternative for resolving criminal acts of fraud and embezzlement in the Surabaya Police. The approach is referred to as "diversion" and has been successfully implemented when both parties cooperate in line with the rules of the Code of Criminal Procedure. However, legislative standards or regulations are necessary to ensure the consistent application of restorative justice principles within the Indonesian National Police.

The study suggests that the implementation of restorative justice has not encountered significant obstacles, provided that each party agrees to follow the inquiry procedures. Moreover, restorative justice can benefit both offenders and law enforcement, offering a humanistic approach to justice that should be adopted as part of the criminal justice system.

The discretionary authority of police investigators is a crucial factor in re-establishing justice in the criminal justice system. Police investigators are granted a significant level of discretion in their work, which allows them to make decisions and take actions based on their professional judgment and expertise. This discretionary authority can be exercised in the implementation of restorative justice principles, which aim to promote healing, reconciliation, and restoration of relationships between the offender and the victim. Through the use of restorative justice, police investigators can consider the unique circumstances of each case and determine the most appropriate course of action for all parties involved. This approach focuses on repairing the harm caused by the offense and restoring relationships between the parties, which can lead to a fair and just outcome for everyone. The discretionary authority of police investigators allows them to tailor the process of restorative justice to fit the needs of each individual case, taking into account the wishes and needs of the victim and the offender.

Overall, the study highlights the importance of restorative justice in criminal cases of fraud and embezzlement. It underscores the need for legislative standards and regulations to ensure the consistent application of restorative justice principles within the Indonesian National Police. The adoption of restorative justice can provide a more humanistic approach to justice and should be considered as part of the criminal justice system to benefit both offenders and law enforcement.

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